INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statutes involved	2
Statement	3
Argument	6
Conclusion	9

CITATIONS

Cases:

Commissioner v. *W. H. Luquire B. Ass'n*, 102 F. 2d 89	8
General Utilities Co. v. *Helvering*, 296 U. S. 200	8
Helvering v. *Gowran*, 302 U. S. 238	8
Helvering v. *Oregon Ins. Co.*, 311 U. S. 267	8
Helvering v. *Rankin*, 295 U. S. 123	8
Lamana-Panno-Fallo I. Ins. Co. v. *Commissioner*, 127 F. 2d 56	8
LeTulle v. *Scofield*, 308 U. S. 415	8

Statutes:

Revenue Act of 1934, c. 277, 48 Stat. 680, Sec. 201	2
Revenue Act of 1936, c. 690, 49 Stat. 1648, Sec. 201	3

531564—43

In the Supreme Court of the United States

OCTOBER TERM, 1942

No. 1026

C. P. A. COMPANY, PETITIONER

v.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The Circuit Court of Appeals did not file a written opinion. The opinion of the United States Board of Tax Appeals (R. 76–85) is reported at 45 B. T. A. 365.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered February 17, 1943 (R. 93). The petition for a writ of certiorari was filed on May 14, 1943. The jurisdiction of this Court is in-

voked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

The taxpayer was engaged in writing job insurance contracts which, in most instances, also provided for certain payments if death occurred prior to the retirement or discharge of the insured. The reserves for death benefits, which were computed and maintained separately from the reserves for retirement benefits, constituted less than 50 percent of the total reserves. The question presented is whether the taxpayer is a "life insurance company" within the meaning of Section 201 (a) of the Revenue Acts of 1934 and 1936, so as to entitle it to the favored treatment that is accorded to life insurance companies under the revenue acts.

STATUTES INVOLVED

Revenue Act of 1934, c. 277, 48 Stat. 680:

> SEC. 201. TAX ON LIFE INSURANCE COMPANIES.
>
> (a) *Definition.*—When used in this title the term "life insurance company" means an insurance company engaged in the business of issuing life insurance and annuity contracts (including contracts of combined life, health, and accident insurance), the reserve funds of which held for the fulfillment of such contracts comprise more than 50 per centum of its total reserve funds.
>
> * * * * *

Section 201 (a) of the Revenue Act of 1936, c. 690, 49 Stat. 1648, is identical with the above section of the Revenue Act of 1934.

STATEMENT

The taxpayer was incorporated on September 16, 1915, under the Insurance Code of the State of Michigan for the purpose of insuring railway conductors, engineers, and officials "against loss of position resulting from discharge or retirement," and of reinsuring other companies engaged in a similar business (R. 76). By an amendment to its articles in 1918, the nature of the business was restated to include the insurance of railway employees "against bodily injury or death by accident or against disability on account of sickness" (R. 77). A further amendment in 1923 stated the taxpayer's purposes to be (1) "To insure railway employees against loss of position resulting from discharge or retirement," (2) "To insure any person against bodily injury or death by accident or against disability on account of sickness," and (3) "To insure the lives and health of persons, and every insurance pertaining thereto and to grant, purchase or dispose of annuities" (R. 77).

The taxpayer's business at all times material here was confined exclusively to the issuing of policies of insurance to railway employees. The policies are entitled "Job Insurance For Railroad Men" (R. 77).

During the taxable years 1935 and 1936 the taxpayer had outstanding and in force nine different types of insurance policies[1] (R. 77). Four of the nine types provided for a discharge benefit and a retirement benefit due to disability or old age. The amount was dependent upon the length of time the policy had been in force. Upon death of the insured due to natural causes (and with one exception due to accident), all four provided for the payment of a stated amount (Ex. B and E) or the return of all premiums paid (Ex. C and D). The amount of the death or burial benefits had no connection with the discharge or retirement benefits. Upon the insured reaching the retirement age he received the amount definitely set forth in the policy. But if the insured died prior to the date of retirement, the beneficiary would not receive the amount indicated on the face of the policy as discharge or retirement benefits. (R. 77–78.)

Three other types of policies issued by the taxpayer (Ex. F, G, H; R. 63–67) provided for the payment of $5 a day for a stipulated number of days in the event of discharge of the insured. Two of these provided for a funeral benefit of $250, and one for double indemnity in case of death by accident (R. 63, 65). The third, together with the two remaining of the nine types,

[1] Copies of seven of the nine types of policies issued by the taxpayer during the taxable years involved were introduced in evidence as exhibits (R. 53–67).

contained no provision for death or funeral benefits (R. 78).

Ninety per cent of the policies issued and outstanding during the taxable years provided for the payment of a specified sum of money upon the death of the insured prior to discharge or retirement, as well as for the payment of a specified amount in the case of discharge or retirement. All of the policies provided for a single annual premium without any separate charge for the death or other benefit apart from the retirement benefit. (R. 78–79.)

The reserves set aside from premiums and maintained by the taxpayer during the taxable years were held exclusively against its unaccrued and contingent liability for either the death benefit or the retirement benefit payable under the policies in force during those years. No reserve was maintained for the discharge benefits. The retirement reserve and death-benefit reserve were separately computed and maintained, contrary to the practice of life-insurance companies generally. None of the policies of insurance provided for a cash surrender value. (R. 80, 82.)

Prior to 1937 the taxpayer computed the reserves set up and maintained by it against the liability for retirement and death benefits under issued and outstanding policies on the basis of the American Experience Table of Mortality, with an assumed rate of interest at 4 per cent, as required by the Department of Insurance of the

State of Michigan. The retirement reserve was computed in the same manner as a pure endowment reserve maturing at the age of 70 for the amount of the retirement payment benefit payable under each individual contract at that age. The death benefit (life) reserve was considered a yearly renewable term insurance and was computed and set up on that basis. (R. 81.)

The taxpayer's total retirement reserves as of December 31, 1935, and December 31, 1936, were $2,130,914 and $2,344,581. Its total death reserves, as of the same dates, were $34,127 and $41,748.80. (R. 80–81.)

The court below sustained the Board in rejecting the taxpayer's contention that it was a "life insurance company" under the definition contained in Section 201 (a) of the 1934 and 1936 Acts.

ARGUMENT

The basic issue in this case is whether the taxpayer is entitled to special classification as a life insurance company for income tax purposes, merely because most of its job insurance policies also provide for incidental death benefits if the insured should die before retirement or discharge. It is evident that the principal features of the policies are the retirement and discharge provisions. This is shown both by a comparison of the monetary payments provided by the policies (R. 84) and by a comparison of the reserves covering the death and retirement features (R. 80–81).

The taxpayer's position entails the two propositions that (1) any insurance contract which includes a death feature is a life insurance contract within the meaning of Section 201 (a) of the Act, and (2) that the reserves covering not only the death provisions but also all other provisions of such contracts must be counted in determining whether the 50-percent requirement of the statutory definition has been satisfied. The contentions are patently inconsistent with the manifest purpose of Section 201 (a) to include within the classification of life insurance companies only those companies engaged principally in writing life contracts. And the statute by expressly referring to "contracts of combined life, health, and accident insurance," clearly excludes by inference combined policies containing other nonlife features.

The court below, in its judgment, concluded that the contracts "were not life insurance and annuity contracts, nor were they contracts of combined life, health, and accident insurance" (R. 93). The Board of Tax Appeals had also stated that the contracts were neither annuity contracts nor "combined life, health, and accident insurance" (R. 83), but did not express an opinion as to whether they could nevertheless be considered as life insurance contracts; the Board placed its decision principally on the ground that the taxpayer's death reserves, as distinguished from its retirement reserves, did not constitute 50

percent of all its reserves as the statute requires (R. 85).

The decision, we think, is correct on whichever point emphasis is placed, and there is no conflict. There is no inconsistency, as the taxpayer asserts (Pet. 6–7), with the decisions of the Circuit Court of Appeals for the Fifth Circuit in *Commissioner* v. *W. H. Luquire B. Ass'n,* 102 F. 2d 89, and *Lamana-Panno-Fallo I. Ins. Co.* v. *Commissioner,* 127 F. 2d 56. Those cases hold that burial policies are life insurance contracts; the problem here arises from the combined characteristics of the policies. There is likewise no inconsistency (Pet. 8–9) with *General Utilities Co.* v. *Helvering,* 296 U. S. 200, and *Helvering* v. *Rankin,* 295 U. S. 123. The court below neither found facts which had not been found by the Board of Tax Appeals, nor based its decision on facts which were contrary to the Board's findings. At most it can be said that the appellate court sustained the Board's decision on a different theory, which, of course, it properly could do. *LeTulle* v. *Scofield,* 308 U. S. 415; *Helvering* v. *Gowran,* 302 U. S. 238.

Helvering v. *Oregon Ins. Co.,* 311 U. S. 267, held that a company, admittedly a life insurance company, was entitled, in determining the deduction measured by its "reserve funds required by law" under Section 203 (a) (2) of the 1932 Act, to include all the reserves attributable to its com-

bined life, health, and accident insurance. The probable conflict asserted with that decision, however, simply assumes one of the points in issue, for it rests on the premise that the taxpayer's policies were contracts of combined life, health, and accident insurance (Pet. 9–11). Both the Board of Tax Appeals (R. 82–85) and the court below held otherwise (R. 93).

CONCLUSION

The petition for certiorari should be denied.

Respectfully submitted.

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